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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SUNG OK LEE,

Plaintiff and Appellant,

v.

HYUN HO CHUN et al.,

Defendants and Respondents.

B186229

(Los Angeles County  
Super. Ct. No. BC287277)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Rolf M. Treu, Judge. Affirmed.

Law Offices of Baird Brown, Baird Brown for Plaintiff and Appellant.

Law Offices of Francis S. Ryu, Francis S. Ryu, Jerry J. Chang for Defendants and  
Respondents.

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The trial court denied appellant's motion to enforce a judgment entered on a settlement agreement, finding that respondents had already complied with the judgment. We affirm.

## FACTS

In 2002, appellant Sung Ok Lee (Lee) sued her sister and brother-in-law, respondents Hyun Ho Chun and Sung Ae Chun (the Chuns), to dissolve a partnership and for an accounting. The parties owned a restaurant in Rowland Heights. Lee sought a 50-50 division of partnership assets between herself and the Chuns. The Chuns cross-complained for declaratory relief. The Chuns alleged that they are not in partnership with Lee, who merely made a personal loan to them and is not a part owner of the restaurant.

In 2003, the parties reached a written settlement agreement. It reads: “Parties agree to cooperate in selling the . . . [r]estaurant business.” Further, “from the net proceeds, plaintiff will receive \$44,200 ‘off the top,’” and the “[r]emainder of proceeds will be disbursed 50% to plaintiff and 50% to [d]efendants,” after payment of a \$40,000 trade debt and broker/escrow fees. The settlement agreement allows any party to “opt out” of the joint sale, starting in December 2003, to “allow the other side to ‘buy-out’ the opting-out party at the purchase price then in hand.” The court retained jurisdiction to enforce the settlement agreement.

In March 2004, the Chuns asked the trial court to enforce the terms of the settlement agreement. They contended that Lee had violated the settlement by refusing to cooperate in the sale of the restaurant, leaving the country, and failing to respond to attorney communications regarding the sale.<sup>1</sup> As a result, the Chuns were unable to accomplish the sale of the restaurant, despite having received several purchase offers. Lee did not respond to the Chuns’ motion.

The trial court rendered judgment in April 2004. The judgment stated that the Chuns “shall have absolute and sole discretion” to sell the restaurant and set the terms, price and conditions for the sale. In addition, the court authorized the Chuns to buy out

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<sup>1</sup> The settlement agreement required the parties to communicate with each other through counsel.

Lee's interest in the restaurant under the opt-out provision of the settlement. Lee did not appeal from the judgment.

In February 2005, 10 months after judgment was rendered, Lee moved to set aside and vacate or correct the judgment. She asserted that her former attorney failed to keep her advised of developments in the sale of the restaurant, and failed to inform her about the Chuns' motion to enforce the settlement agreement. Lee argued that the judgment was incorrect because the settlement agreement did not authorize the Chuns to buy her out or give them complete discretion over the terms of the sale.

The court ruled that this was not an appropriate case for relief. By statute, Lee had only three months after entry of judgment to request a correction in the judgment for failure to conform to the terms of the settlement agreement. In any event, the court found that Lee's arguments were without merit because the settlement agreement allowed the Chuns to buy out Lee's interest in the restaurant. Lee did not appeal from the court's denial of her motion to correct the judgment.

In May 2005, Lee brought a motion to enforce the judgment. Lee observed that a prospective purchaser offered \$210,000 for the restaurant in February 2004; therefore, she reasoned, the Chuns had to buy out her interest at \$210,000. The Chuns opposed Lee's motion, noting that they were unable to respond to several purchase offers in 2003 and early 2004, because Lee had disappeared and was not cooperating in the sale process. After the court authorized the Chuns to sell the restaurant unilaterally, in April 2004, they received an offer for \$110,000. The Chuns elected to purchase the business themselves at the price then in hand, and deposited \$44,400 in escrow for Lee.

In its ruling, the court stated that in April 2004, it entered judgment pursuant to the parties' settlement agreement, after Lee failed to cooperate in the sale of the restaurant. The judgment gave the Chuns absolute discretion to sell the restaurant, and they sold it to themselves for \$110,000, the same amount then being offered by a prospective purchaser. The judgment did not restrict the persons to whom the property could be sold. The Chuns had "complied with the court's judgment." The court denied Lee's motion to enforce the settlement agreement. Lee appeals from the denial of her motion.

## DISCUSSION

Lee brought her motion under Code of Civil Procedure section 664.6.<sup>2</sup> “The trial court’s factual findings on a motion to enforce settlement pursuant to section 664.6 are subject to limited appellate review and will not be disturbed if supported by substantial evidence.” (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162; *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 815.)

It is important to emphasize what is *not* under review in this appeal. We are not reviewing the correctness of the trial court’s interpretation of the settlement agreement, as embodied in the court’s April 2004 judgment. The judgment itself was not appealed, and is final for purposes of res judicata. Although Lee belatedly pursued a motion to vacate the judgment, her motion was denied and she took no appeal. Thus, we are limited to determining whether there is substantial evidence to support the trial court’s factual finding that the Chuns “have complied with the court’s judgment.”

The court’s judgment gave the Chuns “absolute and sole discretion, including the terms, price and conditions, to sell the subject restaurant,” or elect to “buy-out” Lee under the opt-out provision. The judgment does not specify that the Chuns were obliged to sell the restaurant to a third party. Likewise, the settlement agreement does not bar the parties from matching a third party offer and purchasing the business for themselves, at the price then in hand. The agreement states only that the “parties agree to cooperate in selling the . . . [r]estaurant business.

The evidence presented to the court showed that the Chuns received a written third party purchase offer for \$110,000. Using the \$110,000 purchase offer price, the Chuns

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<sup>2</sup> The statute reads, “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

elected to match the offer and purchase the restaurant themselves.<sup>3</sup> In effect, Lee opted out of the joint sale by disappearing and failing to respond to third party purchase offers. When Lee opted out of the joint sale, the Chuns were entitled to buy her out at the purchase price then in hand. There was substantial evidence to support the trial court's finding that the Chuns complied with the judgment.

The evidence offered by Lee of a \$210,000 purchase offer, in February 2004, is irrelevant because it preceded the judgment and occurred during the time frame when Lee was outside of the country and refusing to cooperate in the sale of the restaurant. This sale opportunity was missed due to Lee's conduct. The Chuns cannot be blamed if the next offer they received was for a lower price. Although Lee suggests that the \$110,000 purchase offer was fraudulent, there is no evidence to support her claim of fraud.

**DISPOSITION**

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.

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<sup>3</sup> Contrary to Lee's view that "you can't sell something to yourself," the Chuns could sell the business they *jointly owned* with Lee to themselves as *sole proprietors*, because the trial court gave them absolute authority to select the terms, price and conditions of the sale.